

STATE OF MICHIGAN
COURT OF APPEALS

LINDA MOLITORIS,

Plaintiff-Appellant,

v

SAINT MARY MAGDALEN
CATHOLIC CHURCH,

Defendant-Appellee.

UNPUBLISHED

January 4, 2024

No. 364820

Livingston Circuit Court

LC No. 22-31366-NO

Before: GLEICHER, C.J., and SWARTZLE and YATES, JJ.

PER CURIAM.

The landscape of slip-and-fall jurisprudence in Michigan changed dramatically on July 28, 2023, when our Supreme Court rendered its opinion in *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95; ___ NW2d ___ (2023), which reframed the analysis of open and obvious defects in premises liability cases filed by invitees. But in designing that new approach, our Supreme Court reaffirmed “that the three traditional status-based categories—licensee, invitee, and trespasser—remain” the law in Michigan. *Id.* at 143. Plaintiff, Linda Molitoris, insists that she can avail herself of the new approach because she was an invitee when she fell on ice in a church parking lot. The trial court rejected plaintiff’s premises liability claim, characterizing her as a licensee (rather than an invitee) and concluding that she cannot meet any of the requirements she must satisfy to prevail on a claim for premises liability as a licensee. We agree, so we shall affirm the trial court’s award of summary disposition to defendant under MCR 2.116(C)(10).

I. FACTUAL BACKGROUND

Plaintiff is both a parishioner and a volunteer at defendant, Saint Mary Magdalen Catholic Church (“the Church”). On February 22, 2021, plaintiff went to the Church to perform volunteer work at Magdalen’s Kitchen, a weekly event where free meals are prepared and served to those in the community. Plaintiff arrived at the Church at 3:00 p.m. that day. She did not encounter issues with snow or ice as she walked through the parking lot and went into the Church. Plaintiff did not go outside again until she left the Church at approximately 7:00 p.m. Plaintiff exited through the same door she had used to enter the Church, and then she walked towards her vehicle in the parking

lot. Plaintiff asserts that she was looking where she was going and did not see snow or ice in the parking lot. Plaintiff does not remember precipitation falling at that time, and she does not recall the pavement in the parking lot appearing wet. Plaintiff insists that the parking lot was dark at the time she left and that the lights in the parking lot were not on. As plaintiff stepped off the sidewalk and into the parking-lot area, she suddenly slipped and fell to the ground. Plaintiff alleges that, as she was on the ground, she could feel ice in the area around her. As a result of her fall, plaintiff suffered a fractured left wrist that required surgery, fractures to her pelvis, and a fractured hip.

On January 18, 2022, plaintiff filed this action against the Church for ordinary negligence and premises liability. When the Church sought summary disposition, plaintiff agreed to dismiss her claim for ordinary negligence and proceed only on a premises-liability theory. Plaintiff argued that the Church owed her a duty as an invitee. The Church asserted that it did not owe her a duty based on the fact that plaintiff was a licensee when she suffered her injuries. The trial court decided from the bench on January 5, 2023, that plaintiff was a licensee and awarded summary disposition under MCR 2.116(C)(10) to the Church on that basis. The trial court thereafter memorialized its ruling in an order entered on January 24, 2023. This appeal now follows.

II. LEGAL ANALYSIS

Plaintiff argues on appeal that the trial court erred in characterizing her as a licensee, rather than an invitee, because that determination must be made by a jury. Beyond that, plaintiff contends that the Church breached a duty it owed to her and had constructive notice of the ice on which she fell. For those reasons, plaintiff asserts that the trial court erred in awarding summary disposition to the Church under MCR 2.116(C)(10). “We review de novo a trial court’s decision on a motion for summary disposition.” *El-Khalil v Oakwood Healthcare, Inc.*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Id.* at 160. “When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion.” *Id.* The motion may be granted only “when there is no genuine issue of material fact.” *Id.* “ ‘A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.’ ” *Id.* Applying these standards, we must decide whether the trial court properly determined that plaintiff could not succeed on her premises liability claim.

A. INVITEE OR LICENSEE

“All negligence actions, including those based on premises liability, require a plaintiff to prove four essential elements: duty, breach, causation, and harm.” *Kandil-Elsayed*, 512 Mich at 110. “The first element, duty, ‘is essentially a question whether the relationship between the actor and the injured person gives rise to any legal obligation on the actor’s part for the benefit of the injured person.’ ” *Id.* “In the context of premises liability, ‘a landowner’s duty to a visitor depends on that visitor’s status.’ ” *Id.* at 111. Michigan law recognizes “three common-law categories for persons who enter upon the land or premises of another: (1) trespasser, (2) licensee, or (3) invitee.” *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). Each of the “categories corresponds to a different standard of care that is owed to those injured on the owner’s premises.” *Id.* “Thus, a landowner’s duty to a visitor depends on that visitor’s status.” *Id.*

The outcome of plaintiff's premises-liability claim largely turns on whether plaintiff was a licensee or an invitee when she fell on ice in the Church parking lot. A landowner like the Church owes a much greater duty to an invitee than to a licensee. A licensee is someone permitted to enter the premises of another by virtue of the landowner's consent. *Sanders v Perfecting Church*, 303 Mich App 1, 4; 840 NW2d 401 (2013). A landowner owes a licensee only a duty to warn of hidden dangers "the landowner knows or has reason to know of, and only if the licensee does not know or have reason to know of the dangers involved." *Burnett v Bruner*, 247 Mich App 365, 378; 636 NW2d 773 (2001). Significantly, a landowner "owes no duty of inspection or affirmative care to make the premises safe" for a visit by a licensee. *Stitt*, 462 Mich at 596.

In contrast, an invitee is a person "who enters upon the land of another upon an invitation" that "carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises" and make the premises safe for the invitee. *Id.* at 596-597. A landowner "has a duty of care, not only to warn the invitee of any known dangers, but the additional obligation to also make the premises safe[.]" *Id.* at 597. "Thus, an invitee is entitled to the highest level of protection under premises liability law." *Id.* On appeal, plaintiff contends that, when she fell in the Church parking lot, she was an invitee entitled to the highest level of premises liability law protection. For its part, the Church insists that the trial court properly characterized plaintiff at that point in time as a mere licensee.

Individuals who enter onto church property for noncommercial purposes are licensees as a matter of law. *Id.* at 595, 604. The primary consideration when determining a visitor's status at the time of the injury is "the owner's reason for inviting persons onto the premises[.]" *Id.* at 604. If evidence is presented "from which invitee status might be inferred, it is a question for the jury." *Id.* at 595. But when a plaintiff fails to offer evidence that creates a factual dispute as to whether a church invited people onto its property for "an essential commercial purpose," see *id.* at 606, the plaintiff's status as a licensee should be decided by the court. *Sanders*, 303 Mich App at 5-6. The predominant or essential purpose for which the Church invited people onto its premises for Magdalen's Kitchen was to feed the less fortunate. No one bought any meals at that community event, so any income generated by that event should be considered insufficient to establish that the event had a commercial purpose. *Stitt*, 462 Mich at 604 ("the prospect of pecuniary gain is a sort of quid pro quo for the higher duty of care owed to invitees").

Here, the trial court reasoned that, "at the time she fell, [p]laintiff was on the [d]efendant's premises as a volunteer, and her activities were not commercial in nature, nor done for commercial purposes." Similarly, in *Kosmalski v St John's Lutheran Church*, 261 Mich App 56; 680 NW2d 50 (2004), this Court concluded that a volunteer injured while working at a church's vacation bible school "in the job of a playground helper" was not offering "child-care services for 'a material or commercial purpose' rather than one of 'a spiritual, religious or social nature.'" *Id.* at 57, 62-63. This Court reached that conclusion, and thereby treated the injured volunteer as a licensee, even though the volunteer was not a church member. *Id.* at 62. Accordingly, the trial court in this case ruled in a manner faithful to our precedent in concluding that plaintiff was a licensee—as opposed to an invitee—when she went to the Church to serve as a volunteer at Magdalen's Kitchen.

B. PLAINTIFF’S CLAIM AS A LICENSEE

Our conclusion that plaintiff was a licensee, rather than an invitee, when she fell on ice and suffered injuries in the Church parking lot does not necessarily defeat her premises liability claim. Indeed, *Kosmalski* illustrates that a licensee injured on the premises of a church while performing volunteer activities may survive summary disposition when there are “hidden dangers the [church] knows or has reason to know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger and the risk involved.” *Id.* at 65. In those circumstances, the church owes the licensee “a duty to warn the licensee of any hidden dangers[.]” *Id.* To be sure, the duty to warn is limited to hazards the church actually knows exist, so the church owes no duty to warn of hazards just because further inspection might have revealed the hazards. *Shaw v Wiegartz*, 1 Mich App 271, 277; 135 NW2d 565 (1965). Also, if the licensee knows or has reason to know of a hazard and the risk involved, the church has no duty to warn the licensee of the hazard. *Blackwell v Franchi*, 502 Mich 918, 919; 914 NW2d 900 (2018). In sum, Michigan does not impose “a duty owed by a landowner to his licensees to repair or to inspect his property.” *Burnett*, 247 Mich App at 372. “Rather, the landowner simply owes the licensee a duty to warn of unreasonably dangerous conditions, when the licensee neither knows nor has reason to know of the condition and risk involved.” *Id.*

In granting the Church summary disposition under MCR 2.116(C)(10), the trial court relied on four conclusions on which no genuine issue of material fact exists. First, the record contains no evidence that the Church was aware of the icy condition of the parking lot. Second, plaintiff has lived in Michigan for decades and readily understood on the evening of her fall that there could be ice in the parking lot on a cold day in February. Third, plaintiff has not established that the ice on which she fell presented an unreasonable risk of harm. Fourth, because plaintiff was a licensee, the Church had no duty to inspect the parking lot, discover the ice, or either remove the ice or warn plaintiff of its existence. Placing these conclusions in the analysis of a premises liability claim of a licensee such as plaintiff, the trial court appropriately resolved defendant’s summary disposition motion. Specifically, the Church owed no duty to warn plaintiff of the icy parking lot because the Church was unaware of that hazard, the Church had no duty to inspect the parking lot, and plaintiff had sufficient experience in Michigan to know, or have reason to know, of the risk of ice on a cold night in February. See *Stitt*, 462 Mich at 596. Beyond that, the icy parking lot did not constitute an “unreasonably dangerous condition.” *Perkoviq v Delcor Homes–Lake Shore Pointe, Ltd*, 466 Mich 11, 19-20; 643 NW2d 212 (2002) (“The mere presence of ice, snow, or frost on a sloped rooftop [off which plaintiff fell] generally does not create an unreasonably dangerous condition.”). Consequently, even though “a landowner owes a licensee a duty to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger and the risk involved[.]” *Kosmalski*, 262 Mich App at 65, plaintiff cannot satisfy any—much less all—of those requirements. As a result, the trial court correctly awarded summary disposition to defendant under MCR 2.116(C)(10) on plaintiff’s premises liability claim.

Affirmed.

/s/ Brock A. Swartzle
/s/ Christopher P. Yates

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GLEICHER, C.J. (*concurring in part and dissenting in part*)

Linda Molitoris slipped and fell on black ice in a church parking lot, sustaining severe injuries. Since Molitoris was at the church to prepare meals for the needy rather than to enrich the church financially, Michigan law categorizes her as a licensee—a non-business visitor with consent to be on the premises. The majority correctly holds that because Molitoris was a licensee, the church was obligated to warn her only of hidden dangers creating an unreasonable risk of harm that the church knew about, and no direct evidence supports that it was aware of the black ice. And even if a duty to inspect the parking lot existed, my colleagues declare, the black ice did not present an unreasonable danger.

The majority’s status-based description of the church’s minimal duty of care conforms with Michigan law. But I cannot agree with the majority’s determination that a parking lot sheathed in black ice is not unreasonably dangerous. That conclusion rests on obiter dictum from a case involving a fall from an icy roof, *Perkoviq v Delcor Homes–Lake Shore Pointe, Ltd*, 466 Mich 11, 19-20; 6443 NW2d 212 (2002) (“The mere presence of ice, snow, or frost on a sloped rooftop [off which a plaintiff falls] generally does not create an unreasonably dangerous condition.”). According to the majority, Molitoris was obligated to anticipate the presence of black ice because she “has lived in Michigan for decades and readily understood on the evening of her fall that there could be ice in the parking lot on a cold day in February.” Her intrinsic knowledge as a Michigander, the majority reasons, transformed the invisible black ice into a foreseeable danger.

In *Hoffner v Lanctoe*, 492 Mich 450, 463-464; 821 NW2d 88 (2012), our Supreme Court rejected the “prominently cited notion” that ice and snow hazards are “obvious to all” and automatically eliminate a jury-submissible premises liability case. Contrary to the majority and the *Perkoviq* dicta, snow and cold temperatures do not create an irrefutable presumption of accompanying ice. While “wintry conditions, like any other condition on the premises, may be deemed open and obvious,” the question remains “whether the *individual* circumstances, including the surrounding conditions, render a snow or ice condition open and obvious such that a reasonably prudent person would foresee the danger.” *Hoffner*, 486 Mich at 464 (emphasis added). Regarding invitees, “a premises owner has a duty to exercise reasonable care to diminish the hazards of ice and snow accumulation” by taking “reasonable measures” within a “reasonable time after an accumulation of ice and snow to diminish the hazard of injury to the invitee.” *Id.* (quotation marks and citation omitted).¹

This language instructs courts to apply a fact-specific analysis in ice cases rather than rubber-stamping a “wintry conditions” rule deeming every patch of ice on property open and obvious as a matter of law. Logically, there is no reason that a different rule should apply to licensees, even though a different standard of care applies. And in *Kandil-Elsayed v F & E Oil, Inc.*, ___ Mich ___; ___ NW2d ___ (2023) (Docket Nos. 162907 and 163430), the Supreme Court explicitly jettisoned *Perkoviq*’s reasoning along with the standard of care approach to ice and snow hazards, holding that whether an invitee should have discovered an allegedly open and obvious danger “is relevant to the defendant’s breach and the plaintiff’s comparative fault[.]” *id.*, slip opinion at 2. Questions of breach and comparative fault are almost always for a jury to resolve. “Rather than conduct a narrow analysis of whether an obvious danger . . . poses an ‘unreasonable risk of severe harm,’ ” the Supreme Court decreed in *Kandil-Elsayed*, a “fact-finder should consider whether ‘the possessor should anticipate the harm despite such . . . obviousness.’ ” *Id.*, slip op at 43, quoting 2 Restatement Torts, 2d, § 343A, p 218 (second omission in original). “[W]hether a land possessor should anticipate harm from an otherwise open and obvious danger is a relevant inquiry under *breach*, not duty.” *Id.*

That said, the *Kandil-Elsayed* majority also held that “the three traditional status-based categories—licensee, invitee, and trespasser—remain in effect, reserving the question of whether to adopt the Third Restatement’s blanket reasonable-care standard for a later time.”² *Id.*, slip op at 39. This case is a poster child for jettisoning the status distinctions.

¹ This holding flowed from an earlier case, *Quinlivan v Great Atlantic & Pacific Tea Co, Inc.*, 395 Mich 244, 261; 235 NW2d 732 (1975), in which the Supreme Court held that although an invitor does not guarantee an invitee’s safety, “the invitor has a duty to exercise reasonable care to diminish the hazards of ice and snow accumulation.” *Id.* This requires “that reasonable measures be taken within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury to the invitee.” *Id.*

² The Third Restatement of Torts eliminated status-based categories and created one general duty of care owed to anyone who entered a land possessor’s property. See 2 Restatement of Torts, 3d, § 51, p 242.

Under current Michigan law, the church owed Molitoris no duty to even try to make the parking lot safe for her and her fellow volunteer meal-preparers. Yet had Molitoris slipped and fallen on black ice in the parking lot of the Marco's Pizza restaurant just down the road, a jury would decide whether the premises owner was liable for failing to remove or to warn of the danger. And had the victim of the church's black ice been a farmer selling vegetables to the church for use in the meals that Molitoris was preparing, the church would be liable for the farmer's injuries. Perhaps the moral of this story is that under Michigan's current premises liability law, no good deed goes unpunished.

Why has the obviously inequitable invitee-licensee distinction persisted in Michigan? Historically, these common-law distinctions "were inherited from a culture deeply rooted to the land, a culture which traced many of its standards to a heritage of feudalism." *Kermarec v Compagnie Generale Transatlantique*, 358 US 625, 630; 79 S Ct 406; 3 L Ed 2d 550 (1959). The United States Supreme Court explained in *Kermarec* that "modern common-law courts" have tinkered with the distinctions, creating "subclassifications" and delineating "fine gradations in the standards of care which the landowner owes to each." *Id.* Because these adjustments "produced confusion and conflict," the Supreme Court eliminated them in admiralty law, adopting "a single duty of reasonable care in all the circumstances." *Id.* at 631-632.

Many state courts followed suit in cases of premises liability. According to the jurisdictional vote count described in *Koenig v Koenig*, 766 NW2d 635, 640 (Iowa, 2009), "a bare majority of states have now departed from the original trichotomy in some fashion[.]"³ The Iowa Supreme Court summarized in *Koenig* that abolishing the distinctions avoids "confusion," allowing for the use of "an easily applicable standard." *Id.* at 643-644. The *Koenig* Court reasoned that "[t]he difficulty in distinguishing between invitees and licensees underscores another disadvantage of the classification—people do not alter their behavior based on an entrant's status as an invitee or licensee." *Id.* at 644. *Koenig* underscored this observation by retelling a compelling hypothetical scenario developed by the West Virginia Supreme Court:

A canvasser who comes on your premises without your consent is a trespasser. Once he has your consent, he is a licensee. Not until you do business with him is he an invitee. Even when you have done business with him, it seems rather strange that your duty towards him should be different when he comes up to your door from what it is when he goes away. . . . What is the position when you discuss business with him and it comes to nothing? No confident answer can be given to these questions. Such is the morass into which the law has floundered in trying to distinguish between licensees and invitees. [*Id.*, quoting *Mallet v Pickens*, 206 W Va 145, 150; 522 SE2d 436 (1999).]

Despite the inconsistencies and the fundamental unfairness of the status distinctions, our Supreme Court unhesitatingly re-dedicated itself to continuing them in *Stitt v Holland Abundant*

³ The "trichotomy" is the distinction between invitees, licenses, and trespassers. In this concurring opinion I limit my discussion to the invitee-licensee distinction.

Life Fellowship, 462 Mich 591, 604; 614 NW2d 88 (2000). *Stitt* announced a “quid pro quo” standard of care in premises liability cases, holding that

the imposition of additional expense and effort by the landowner, requiring the landowner to inspect the premises and make them safe for visitors, must be directly tied to the owner’s commercial business interests. It is the owner’s desire to foster a commercial advantage by inviting persons to visit the premises that justifies imposition of a higher duty. In short, we conclude that the prospect of pecuniary gain is a sort of quid pro quo for the higher duty of care owed to invitees. Thus, we hold that the owner’s reason for inviting persons onto the premises is the primary consideration when determining the visitor’s status: In order to establish invitee status, a plaintiff must show that the premises were held open for a commercial purpose.

This rationale is merely an homage to feudalism, a system that allowed landowners to “act as they pleased within the confines of their own property.” *Koenig*, 766 NW2d at 638.

“Perhaps the protection afforded to landowners by these rules was once perceived as necessary in view of the sparseness of land settlements, and the inability of owners to inspect or maintain distant holdings.” *Smith v Arbaugh’s Restaurant, Inc*, 469 F2d 97, 101; 152 US App DC 86 (1972). Judge David Bazelon observed in *Smith* that “[t]he prestige and dominance of the landowning class in the nineteenth century contributed to the common law’s emphasis on the economic and social importance of free use and exploitation of land over and above the personal safety of those who qualified as trespassers or licensees.” *Id.* Alternatively stated by the Massachusetts Supreme Court, “The feudal conception that the landowner was a sovereign within his own boundaries provided the justification for a line of decisions that predicated the existence and distinguished the degree of a landowner’s liability for injuries occurring on his land on the type of relationship existing between the landowner and the injured party.” *Mounsey v Ellard*, 363 Mass 693, 695; 297 NE2d 43 (1973).

Tort law has evolved considerably even since *Kermanrec*, *Smith*, and *Mounsey*, including in Michigan. The Michigan Supreme Court found our state’s guest passenger statute unconstitutional in 1975, explaining that

[t]o deny guests recompense for negligently inflicted injury, death or loss cannot be justified as a reasonable means to promote hospitality, foster gratitude, prevent collusion, perjury or fraud, reduce insurance premiums, or protect generous drivers from ‘vexatious litigation’ by ungrateful guests or conniving hitchhikers. [*Manistee Bank & Trust Co v McGowan*, 394 Mich 655, 681; 232 NW2d 636 (1975) (citation omitted).]

The doctrine of charitable immunity met the same fate in *Parker v Port Huron Hosp*, 361 Mich 1, 25; 105 NW2d 1 (1960). Historically, many rationales were advanced in support of charitable immunity; *Parker* discusses a sampling. *Id.* at 11-16. Akin to *Stitt*’s explanation for maintaining the distinctions between a landowner’s duty toward invitees and licensees, charitable immunity rested in part on an economic protectionism theory: that charities’ assets should be shielded from dissipation because they are funded by donations and serve worthy purposes. The policy

judgments at the center of *Stitt*, the guest passenger rule, and the charitable immunity doctrine exempt certain actors from the consequences of their carelessness, forcing the injured person to shoulder the economic and physical burdens. Two of these three harsh and discredited doctrines were discarded decades ago.

The common law of torts has moved toward a general standard of care grounded in reasonableness. See 1 Restatement Torts, 3d, § 7, comment *a*, p 77 (“ . . . actors engaging in conduct that creates risks to others have a duty to exercise reasonable care to avoid causing physical harm.”) The Third Restatement eliminates the categorical distinctions of premises liability law, explaining that “[a]t the time these status-based duties were developed, no general duty of care existed, and duties were based on relationships or specific activities. Thus, the status-based duties imposed on land possessors were consistent with basic negligence law and were the basis for imposing *any* duty on land possessors.” 2 Restatement Torts, 3d, §51, comment *a*, p 242. “[T]he status-based duties for land possessors are not in harmony with modern tort law,” the Third Restatement summarizes, rejecting them in favor of “a unitary duty of reasonable care to entrants on the land.” *Id.*

The *Stitt* majority clung to an old rule rather than explaining why a social guest or a volunteer such as Molitoris is less worthy of the law’s protection than someone who was on the land with a business purpose. General negligence principles should apply to her claim. This does not mean that the church that welcomed her as a volunteer is automatically liable for Molitoris’s fall. Absent the application of the licensee rule, a jury may find that the black ice was unforeseeable, or that Molitoris was solely at fault. Churches and homeowners may purchase insurance (and undoubtedly Saint Mary Magdalen Catholic Church has done so) covering even gratuitous visitors. A system that promotes reasonable care across the board benefits landowners *and* visitors by treating all people alike, encouraging safety, and compensating the injured. I urge the Supreme Court to reconsider *Stitt* and to join the modern world of premises liability.

/s/ Elizabeth L. Gleicher